

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA) No. EP-12-CR-2106-DB
)
vs.) El Paso, Texas
)
MARCO ANTONIO DELGADO) October 28, 2013

VOLUME 6 OF 6 VOLUMES
JURY TRIAL
BEFORE THE HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE, and a jury.

A p p e a r a n c e s:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Outside the presence of the jury.)

2 THE COURT: Counsel, we have a problem. One of jurors
3 is missing. I wanted to give him 15 minutes to get here. He's
4 not here yet. So my proposal is we replace him with one of the
5 alternates. That's what they're here for.

6 Any objections?

7 MS. KANOF: No objections from the Government,
8 Your Honor.

9 MR. VELARDE: No objection, Your Honor.

10 THE COURT: He may just have arrived.

11 You know, what? Even if he did, I want to get rid of
12 him. He's so undependable not to be here. He's kept us
13 waiting almost half an hour.

14 MR. ESPER: Which juror is it, Your Honor? The
15 number?

16 THE COURT: I think it's Number 34, Jose Zamora,
17 sitting up there on the top.

18 Any objection?

19 MS. KANOF: Not from the Government.

20 THE COURT: State your objection and your reason if
21 you have one.

22 MR. ESPER: If he's here, Your Honor, I think he's one
23 of the original jurors and probably should stay on.

24 THE COURT: Well, maybe I'll bring him in and ask him
25 what the holdup was.

1 Is he on his way up?

2 COURT SECURITY OFFICER: That's my understanding, yeah.

3 THE COURT: He's going to keep us waiting some more.

4 COURT SECURITY OFFICER: Your Honor, may I go check?

5 THE COURT: Yes, please, John.

6 (Court Security officer exits courtroom.)

7 THE COURT: Have you all been provided with a copy of
8 the verdict form? We went over the Charge the other day, but I
9 didn't go over the verdict form with you. I just want to be
10 sure that you have a copy and you've been provided with it.

11 MS. KANOF: Yes, Your Honor.

12 MR. ESPER: Yes, Your Honor.

13 THE COURT: And there's no objections?

14 MR. ESPER: No.

15 MS. KANOF: No.

16 COURT SECURITY OFFICER: Your Honor, they're all here.

17 THE COURT: They're all here?

18 COURT SECURITY OFFICER: Yes, sir.

19 THE COURT: I want you to bring him in.

20 COURT SECURITY OFFICER: Just him?

21 THE COURT: Yes, just him.

22 (Juror brought into courtroom; open court.)

23 THE COURT: Mr. Zamora, I want to know why you kept us
24 waiting for half an hour.

25 THE JUROR: I was stuck in traffic, sir, on the border

1 freeway. It was at a standstill. I was there for over an
2 hour, probably.

3 THE COURT: Okay. Okay. You can join your other
4 jurors.

5 (Juror leaves the courtroom.)

6 THE COURT: Go ahead and bring them in.

7 I'm going to leave him on the jury, then.

8 (Open court; jury present.)

9 THE COURT: Members of the jury, as you know, we're
10 getting started a little bit late, and I'm sure you probably
11 know why also. So please excuse the delay.

12 And I want to remind you of your obligation to follow
13 all the instructions that I gave you, ladies and gentlemen.
14 We're almost at the end of this trial, and we don't want
15 anything to happen that would make us have to start over again.

16 Now, you've heard all the evidence already.

17 Have they been provided with a copy of the Charge?

18 LAW CLERK: Yes, sir.

19 THE COURT: You've got a copy of the instructions
20 there? Okay.

21 You've heard all of the evidence in this case. Okay?
22 Before you may start your deliberations, though, I am obligated
23 to give you the last set of instructions. You have all been
24 provided with a copy of the instructions, and some of it is a
25 little bit complicated. Okay? It's a little bit more

1 complicated than just coming up with a simple answer. Okay?
2 And you'll see why, probably, as I read it to you.

3 (Court's Charge read.)

4 THE COURT: Is the Government ready to proceed?

5 MS. ARREOLA: Yes, Your Honor.

6 THE COURT: You may.

7 MS. ARREOLA: May it please the Court.

8 CLOSING STATEMENT

9 BY MS. ARREOLA:

10 Ladies and gentlemen of the jury.

11 During the course of this trial you have heard
12 overwhelming evidence that the Defendant Marco Delgado
13 conspired to launder over \$600 million of illegal drug proceeds
14 for the *Milenio* cartel.

15 My purpose today, and that of Ms. Kanof, is to review
16 with you the evidence that you've heard during the course of
17 this trial and to organize it so that you can see how it proves
18 beyond a reasonable doubt that the Defendant Marco Delgado is
19 guilty of the crime charged in the Indictment.

20 Now at the beginning of this trial, you heard from
21 Victor Pimentel, who testified that he, Marco Delgado, Lilian
22 de la Concha, and others spent over a year meeting with members
23 of the cartel in order to set up a deal to launder drug money.

24 As the trial progressed you heard other evidence that
25 consistently supported what Victor Pimentel told you.

1 For example, you heard the testimony of four agents
2 who heard the defendant's confessions.

3 You heard the defendant's own words on recorded calls.

4 And you saw the defendant's e-mails, including the
5 fake settlement agreement.

6 The Government submits that all of this evidence was
7 consistent, it was logical, it made sense. The evidence fit
8 together.

9 But as you know at the end of last week, you heard a
10 different version of events. You heard Marco Delgado's
11 version.

12 He told you that Victor Pimentel and four agents from
13 the El Paso and Atlanta HSI offices -- Alex Ascencio, Joshua
14 Fry, Gabe Aguirre, and Thomas Justice -- he told you that they
15 all lied.

16 Ladies and gentlemen, the Government submits that the
17 defendant contradicted himself, that his testimony was
18 inconsistent with the overwhelming evidence, and that his
19 testimony simply did not make sense.

20 We will take a look at a few of the major flaws in his
21 testimony in a few minutes. But first, let's take a look at
22 how the Government has proven beyond a reasonable doubt that
23 the defendant conspired to commit the offense of money
24 laundering.

25 As Judge Briones just instructed you, in order for you

1 to find the defendant guilty of this crime, the Government must
2 prove beyond a reasonable doubt two elements.

3 First, that the defendant and at least one other
4 person agreed to commit the crime of money laundering, as
5 charged in the Indictment.

6 And second, that the defendant knew of the unlawful
7 purpose of the agreement and joined in it with intent to
8 further that purpose.

9 Let's take a look at some of the evidence that proves
10 these elements beyond a reasonable doubt.

11 First, as just was mentioned, you heard from Victor
12 Pimentel who testified that he, Marco Delgado, Lilian de la
13 Concha, and others spent over a year meeting with members of
14 the cartel to get this deal to launder money.

15 They finally kicked off their operations in September
16 of 2007 with the one million dollar pickup that was ultimately
17 seized.

18 Victor Pimentel explained to you that this was a trial
19 run so that they could prove that they could do what they'd
20 been telling the cartel that they could do for over a year.

21 And Mr. Pimentel also testified that in July 2008,
22 Marco Delgado sent him to Chicago in order to pick up an
23 additional hundred thousand dollars of drug money.

24 What evidence did you hear that corroborated, in other
25 words supported, what Mr. Pimentel told you?

1 Well, let's start with the defendant's own words.

2 You heard from three different agents that Delgado
3 confessed about the Chicago pickup. First, you heard from
4 Agents Alex Ascencio and Gabe Aguirre. They told you about the
5 December 2008 conference call. Do you remember that call?
6 That's when HSI met with Delgado in order to warn him about the
7 threat that had been made on his life.

8 During that call the agents also asked him about the
9 Chicago pickup. Initially, the defendant denied it. He said
10 he didn't know anything about it. But eventually, he admitted
11 that he had done it and that he had not notified the agents.

12 That's not the only time that Marco Delgado confessed
13 about the Chicago pickup.

14 You also heard from Joshua Fry. Agent Fry interviewed
15 Marco Delgado at the end of last year after his arrest. Agent
16 Fry asked Mr. Delgado about the Chicago pickup.

17 And Delgado told him that Delgado, Lilian de la
18 Concha, and somebody named Quezada had decided to conduct the
19 money pickup in Chicago.

20 And Delgado further told Agent Fry that if anyone was
21 involved with drug trafficking it was Quezada.

22 Agent Fry also asked Mr. Delgado why he would move
23 money behind the backs of HSI agents, when the last deal had
24 almost got them killed.

25 And Mr. Delgado responded that his life was in ruins

1 and that he should have called HSI, but he didn't.

2 But, ladies and gentlemen, the evidence doesn't stop
3 there.

4 In addition to the testimony of Mr. Pimentel and the
5 agents who heard Mr. Delgado's confessions, you also saw
6 Mr. Delgado's e-mails. That's Government's Exhibits 1 through
7 32.

8 These are the e-mails that Mr. Delgado sent from his
9 law firm account to Mr. Pimentel, and they corroborate what
10 Mr. Pimentel told you they went through in order to get this
11 deal with the cartel.

12 You'll recall, for example, Government's Exhibits 29
13 and 31, in which Delgado sent the fake settlement agreement to
14 Mr. Pimentel so that he would have paperwork to show the police
15 in case he got stopped.

16 And there were also Government's Exhibits 7B and 9, in
17 which Pimentel and Delgado spoke about the arrest of cartel
18 members.

19 And of course there were the e-mails with coded
20 language about ironworks, construction contracts, and Girl
21 Scout cookies.

22 Now the defendant had a different explanation for all
23 of this, but we'll talk about that in a few minutes.

24 In addition to all of this evidence, you also heard
25 Mr. Delgado's voice on recorded calls.

1 Remember how Victor Pimentel said they spent over a
2 year trying to get this deal with the cartel? Well, the
3 defendant admitted the efforts that they made in some of the
4 recorded calls.

5 For example, Government's Exhibit 50. This is the
6 September 9th, 2000 [sic], call between Mr. Delgado and Lilian
7 de la Concha.

8 Mr. Delgado said to her, I told Pedro if this falls
9 apart because of his stupidity, I told him that he's going to
10 have to answer to me, because I have been trying to arrange
11 things for a long time.

12 And later that same day in a conversation with Chuy,
13 which is Government's Exhibit 51 -- the transcript's at 51A --
14 Mr. Delgado told Chuy, We will fight just like we came in, and
15 we will fulfill our duty to these people and we will begin
16 working like crazy in order to recuperate. I'm very invested
17 for this to fall apart.

18 And remember that conversation that Victor Pimentel
19 told you about the meeting at the Chicago airport, where Chuy
20 asked all of them for their IDs, so that they would be
21 responsible in case something happened to the money?

22 Well, Mr. Delgado -- that was spoken about in the
23 meeting with Rafa Solis, the undercover, Marco Delgado, and
24 Paco.

25 That was Government's Exhibit 58. The transcript is

1 at 58A.

2 This is where Paco says -- and he's very worried,
3 because the million dollars has been seized, and he's worried
4 about violence.

5 He says, Right now the situation, as I see it, is that
6 some very nervous people who think we stole from them and who
7 could begin using violence. I don't know. I don't know in
8 what manner or with whom they would start or how, amongst all
9 of us. They -- they have -- and Marco knows it well -- the
10 documentation of the identity of everyone except mine because,
11 by chance, I wasn't there when none of that happened.

12 And Marco Delgado was present during that call. And
13 he didn't interrupt and say, No, that didn't happen. I don't
14 know what you're talking about.

15 And at that same call Paco expresses his concern over
16 what's going to happen and who's going to pay back the million
17 dollars if they can't recover it.

18 And they have a conversation, and Marco admits that he
19 was involved in organizing it and that they were going to agree
20 to split the commission.

21 Marco Delgado says, Look. I was very clear with Chuy.
22 And I told him, just as we all sat around and organized this,
23 well, then, each one -- come on, we are many. We jump in and
24 come on.

25 And Paco asked him if he would be willing to get in

1 for the part of the commission he was going to take.

2 And Marco says -- it's not 50 percent. He disagrees.
3 He says, Well, look. I don't think with that. Because
4 literally what we discussed -- and that's because you were not
5 there, but it was in equal parts. That question was made
6 without any jokes.

7 And we said, Let's see how much A, B, C, and D. And
8 the one, in fact, who said that you were a participant was
9 Pete. He said, Yes, here, the five.

10 Ladies and gentlemen, that's just some of the evidence
11 that you heard during the course of this trial that shows that
12 Marco Delgado conspired to commit the offense of money
13 laundering.

14 Now, the defendant also testified on Thursday and
15 Friday of last week. But the Government submits that he
16 contradicted himself and that his testimony didn't make sense.

17 First, for example, there was the July 2008 Chicago
18 pickup.

19 Mr. Delgado told you initially -- on Thursday, during
20 direct examination by Mr. Velarde, he told you that he was
21 working with two agents from the Atlanta office to pick up this
22 money and that the agents let him keep \$45,000 of the seized
23 money to pay for expenses that he had supposedly incurred while
24 helping HSI.

25 But he couldn't keep his story straight.

1 Because on Friday, when Mrs. Kanof asked Mr. Delgado
2 about that money and what had happened to it and why he kept
3 it, he changed his story.

4 He told you that the money was a retainer, that his
5 client, G-E-O, had paid him for services.

6 And when she asked him why he kept it he said, At that
7 point we celebrated an agreement and it allowed me to make use
8 of the funds. We started working for them.

9 And she confronted him about his prior testimony. She
10 said, You testified you got to keep the \$45,000 as a result of
11 working for ICE, didn't you?

12 And he said, No. As a result -- he said, Not as a
13 result of working for ICE. I had told Lilian that in any
14 project I would be involved I needed a retainer in advance.

15 Not only was the defendant unable to keep his story
16 straight, his testimony didn't make sense.

17 If the money was payment from a client, G-E-O, to
18 retain Mr. Delgado's services, why was it left on the pavement
19 of a mall parking lot in a brown paper shopping bag wrapped in
20 heat-sealed FoodSaver bags? Why did Martel drive off with --
21 leaving it on the floor without even so much as asking for a
22 receipt from Mr. Pimentel?

23 Is that how legitimate business people conduct their
24 affairs? You know the answer. It's not.

25 The defendant also testified about the million

1 dollars. He said that when Victor arrived in El Paso, Marco
2 Delgado didn't know he had the money with him and that he had
3 been told the funds were from an inheritance.

4 But, ladies and gentlemen, this story also doesn't
5 hold water. Let's look at why.

6 First, let's take a look at the fake settlement
7 agreement that Mr. Delgado sent to Mr. Pimentel.

8 You'll recall that on September 4th, 2007, the day
9 before Mr. Pimentel left from Atlanta to El Paso with the
10 million dollars, the day before, Mr. Delgado sent him the
11 settlement agreement.

12 He first tried to send it in Exhibit 29 at 12:46 p.m.
13 And he said that attached was a settlement form.

14 Now remember, Mr. Pimentel was not an attorney, and he
15 had known Mr. Delgado for many years, and that Mr. Delgado is
16 calling him an attorney in this e-mail.

17 Less than an hour later Mr. Delgado re-sent the
18 e-mail, this time including the attachment. And that is
19 Government's Exhibit 31.

20 Now, Mr. Delgado testified that this was simply a form
21 document that Mr. Pimentel was supposed to use in a mediation
22 over a bond.

23 But, ladies and gentlemen, that doesn't make sense.
24 This is a completed document. All Mr. Pimentel needed to do
25 was open it on his computer, hit the print button, and sign the

1 last page.

2 For example, look how his name is filled in on
3 Paragraph 2. His name is also filled in on the signature page:
4 Victor Pimentel, Attorney.

5 Moreover, the amount of the settlement agreement,
6 \$1.5 million, was just enough to cover the \$1 million that
7 Mr. Pimentel would be traveling with.

8 So is it a coincidence that on the day before
9 Mr. Pimentel left from Atlanta to El Paso carrying \$1 million
10 in cash, is it a coincidence that the day before he did that
11 Mr. Delgado sent him a completed settlement agreement that
12 would cover the \$1.5 million and that he could show to police
13 if he were stopped?

14 Was that a coincidence? No.

15 Mr. Delgado sent him this paperwork so that he would
16 have something to show as documentation for the money in case
17 he got stopped.

18 THE COURT: You have five minutes in your opening.

19 MS. ARREOLA: Thank you, Your Honor.

20 I want to now discuss with you the special verdict
21 form.

22 As part of your deliberations, you will also be
23 required to determine if the Government has proven the unlawful
24 purpose of the conspiracy. In other words, what was the
25 illegal goal that the conspirators hoped to achieve?

1 And those three illegal goals are identified in the
2 special verdict form. The Indictment charges three unlawful
3 goals of the conspiracy.

4 As Judge Briones instructed you, in order to find the
5 defendant guilty, you must find that the Government has proven
6 beyond a reasonable doubt that the Government conspired to
7 commit at least -- excuse me -- that the defendant conspired to
8 commit at least one of these.

9 Just one is enough. But in order to return a guilty
10 verdict, you must all agree on the same one.

11 Let's take a look at the evidence supporting each of
12 these.

13 The first unlawful goal is that the defendant
14 conspired to conduct financial transactions of the proceeds of
15 illegal drug trafficking and that the purpose of those
16 transactions was in order to conceal, for example, the nature
17 or source of the money.

18 So for example, that the money is from illegal drug
19 trafficking money, that it's illegal drug money.

20 Or to conceal the control or ownership of the money.
21 In other words, that the money belonged to the cartel, or the
22 money was controlled by the cartel.

23 So what is some of the evidence that you heard that
24 this was one of the illegal goals of the conspiracy?

25 Well, you saw the fake settlement that we just talked

1 about. Why did Mr. Delgado provide a fake settlement? To
2 cover up the fact that this was actually illegal drug money and
3 that it was owned or controlled by the cartel.

4 You also heard evidence that Marco Delgado intended to
5 use casinos to launder money. And Agent Alex Ascencio
6 explained how casinos can be used to create a paper trail for
7 illegal drug proceeds.

8 You also heard evidence that in July 2008, Marco
9 Delgado gave his girlfriend at the time, Liliana Narvaez's
10 account number, to Mr. Pimentel in order for him to deposit the
11 \$50,000.

12 Why did Marco Delgado want to deposit illegal drug
13 money into his girlfriend's account, the account of somebody
14 who had nothing to do with this?

15 Because it was dirty money, and he wanted to conceal
16 where it came from and who owned and controlled it.

17 The second illegal purpose of the conspiracy is
18 international concealment money laundering.

19 And that just means that the defendant conspired to
20 move money from a place inside the United States to a place
21 outside of the United States, knowing that that movement was
22 designed in order to conceal, for example, the source or the
23 nature of the money, that it was illegal drug trafficking
24 money, or the ownership and control of the money. In other
25 words, that the cartel owned and controlled it.

1 Well, you heard Victor Pimentel testify that one of
2 the ways they planned their money was through the creation of
3 LLCs, limited liability companies, which are just a type of
4 company in the Turks and Caicos Islands.

5 You also heard Agent Alex Ascencio explain to you that
6 one of the ways that drug dealers launder money is through the
7 creation of companies like LLCs.

8 The third and final illegal goal is international
9 money laundering to avoid a federal reporting requirement.

10 Now you heard about two federal reporting requirements
11 during the course of this trial. First, the reporting
12 requirement at banks that individuals who deposit more than
13 \$10,000 in cash, when that happens, the bank is required to
14 file a report with the federal government.

15 And also, when individuals leave the country at the
16 bridge with more than \$10,000 cash, a report -- they must
17 report that money.

18 You also heard evidence that Mr. Delgado conspired to
19 move money from a place inside the United States to a place
20 outside the United States in order to avoid these requirements.

21 For example, Mr. Pimentel testified that he met with
22 Big John, somebody named Big John, to create an LLC in the
23 Turks and Caicos Islands in order to move the illegal drug
24 money.

25 Why the Turks and Caicos Islands? Well, Mr. Delgado

1 told him that the Turks and Caicos Islands were in the United
2 Kingdom. In other words, they're not subject to U.S. banking
3 laws or the U.S. reporting requirements.

4 So by getting the money to the Turks and Caicos, and
5 by moving the money from the United States to the Turks and
6 Caicos, they could deposit it in the financial system and avoid
7 the U.S. reporting requirements.

8 Now, ladies and gentlemen, the judge also instructed
9 you on deliberate ignorance. Before I conclude, I just wanted
10 to make a few comments about that.

11 As the judge instructed you, knowledge can be inferred
12 if the defendant deliberately blinded himself to the existence
13 of a fact.

14 Well, the Government presented testimony from Victor
15 Pimentel that the defendant knew he was dealing with illegal
16 drugs, because Mr. Pimentel told you that they met with members
17 of the cartel, and he also told you that Marco Delgado himself
18 told him that they were going to be moving for the *Milenio*
19 cartel.

20 But not only that. Not only did he have direct
21 knowledge, all of the circumstances surrounding him would have
22 indicated that this was drug money.

23 Mr. Delgado testified -- excuse me -- Special Agent
24 Tom Justice testified that Marco Delgado told him that the
25 group that Liliana [sic] de la Concha introduced him to wanted

1 to slow down the extradition of people from Mexico to the
2 United States. And that when Marco Delgado went and looked up
3 some of those names, he found that they were on the kingpin's
4 designation list. In other words, they were drug dealers.

5 And he also told Agent Justice that this group of
6 people wanted to move \$600 million.

7 Well, ladies and gentlemen, what group of individuals
8 has \$600 million to move and wants to slow down the extradition
9 of drug dealers from Mexico to the United States? Drug
10 dealers.

11 You also heard from Agent Fry, who interviewed Marco
12 after his arrest. And Agent Fry testified that Mr. Delgado
13 told him about the \$600 million, that he didn't know it was
14 drug money, he didn't want to know it was drug money, and he
15 really wanted this deal to go through.

16 But as Judge Briones instructed you, it's not enough
17 to turn a blind eye and put your head in the sand.

18 You may find the defendant had knowledge of a fact if
19 you find that the defendant deliberately closed his eyes to
20 what had otherwise been obvious. And deliberate ignorance is
21 not a way to escape criminal liability.

22 Ladies and gentlemen, the Government respectfully
23 submits that if you consider the overwhelming evidence that you
24 heard during the course of the trial, and if you apply the law
25 as Judge Briones instructed you, you will reach the only

1 verdict consistent with the law and the evidence, that
2 Mr. Delgado is guilty.

3 THE COURT: The Government has 18 minutes left in
4 their final argument.

5 And we're not going to be able to hear them all,
6 ladies and gentlemen of the jury, so we might as well take a
7 break right now.

8 We'll be in recess for the next 15 minutes.

9 (Recess taken; open court; jury present.)

10 THE COURT: You may proceed, Mr. Velarde.

11 MR. VELARDE: May it please the Court, Counsel, ladies
12 and gentlemen.

13 CLOSING STATEMENT

14 BY MR. VELARDE:

15 On behalf of myself personally, Mr. Esper, and
16 Mr. Delgado, I would like to extend to you my heartfelt thanks
17 for your service, your patience, and your attention to the
18 matters that you have heard for the last week.

19 Now that you have heard at least part of the
20 prosecution's closing argument, it is my honor and privilege to
21 address you as one of Mr. Delgado's co-counsel defense
22 attorneys.

23 After my brief summation, I will relinquish the
24 remainder of my time to Mr. Esper, who will touch upon other
25 matters that we believe will help you in your deliberations.

1 The law affords us the opportunity to advance our
2 theory of the case by arguments.

3 However, because this case has been so long and
4 arduous, I believe that I will refrain from arguing the facts.
5 Rather, what I want to do is kind of summarize some of the
6 facts that we believe will help you in your deliberations.

7 We believe that it's very essential that we separate
8 the nonessential from the essential. And I want to leave you
9 with some thoughts so that hopefully these thoughts will
10 crystalize in your minds and you will take them back into the
11 jury deliberation room as you deliberate the case.

12 My review of the evidence is not completely devoid of
13 motive. My motive is to challenge the accusation and highlight
14 the evidence which we believe adequately shows that the
15 Government has failed in its burden to show that Mr. Delgado is
16 guilty beyond a reasonable doubt, as charged in the Indictment.

17 The law says that you are the sworn protectors, a
18 shield, if you will, for a person who is accused, until you
19 reach that point where you have been convinced with regards to
20 each and every element of each and every charge that
21 Mr. Delgado is guilty beyond a reasonable doubt.

22 If there is a close call, you are required to resolve
23 it in favor of Mr. Delgado.

24 You don't accept what the prosecutor gives you. It is
25 your job to look at the evidence, to weigh it, to sift it, to

1 examine it, always keeping in mind that Mr. Delgado is presumed
2 innocent.

3 The Government has the burden in this case, as the
4 Court has already told you, of convincing you beyond a
5 reasonable doubt that Mr. Delgado is guilty as charged.

6 This is not a mere saying, something that we talk
7 about very lightly. Because in imposing that duty upon you as
8 jurors, the law takes into account the fact that in a criminal
9 trial, before one's life and liberty is placed in jeopardy, the
10 Government must satisfy the burden and must prove their case to
11 the point where you, before convicting Mr. Delgado, must be
12 able to say to yourselves, after an analysis of the evidence or
13 an analysis of the lack of evidence, that you have an abiding
14 conviction of his guilt.

15 However, you must acquit Mr. Delgado if you have a
16 reasonable doubt concerning his guilt.

17 I use the word "must" because that is what the judge
18 has told you. But beyond this matter of legal duty, logically,
19 you should acquit Mr. Delgado if there is any lingering doubt
20 that would make you pause or halt.

21 You only need one reason. And I will review the
22 evidence with you and point out many doubts created by the
23 evidence, any one of which is based on reason -- any one of
24 which is the reasonable doubt that shields Mr. Delgado from
25 conviction.

1 On September the 4th, 2004 [sic], the Carroll County
2 Sheriff's Department carried out a routine traffic stop of a
3 vehicle that was being operated by Victor Pimentel.

4 Prior to the sheriff stopping this vehicle, the deputy
5 testified he had no earthly idea that this money [sic]
6 contained money and/or proceeds of any unlawful illegal
7 activity.

8 In the course of his investigation, Mr. Pimentel
9 volunteered that he had money, that he had a million dollars in
10 the back of his car.

11 So Mr. Pimentel was ushered out of the car. He was
12 handcuffed. But immediately upon him saying that he was going
13 to cooperate, they took the handcuffs off. They allowed him to
14 drive the car, and they drove him down to a substation where
15 members of the Immigration and Customs Enforcement were already
16 present.

17 Mr. Pimentel was debriefed at length about the
18 activities that he had undertaken while in Atlanta. He
19 described the two individuals that gave him the money, as well
20 as Pedro Meneses and Isidro Rubio.

21 Then he also told him that he was en route to El Paso
22 to deliver the money to Mr. Delgado.

23 At that point, it's very important for you to know
24 that Mr. Pimentel was coached and told what to do in terms of
25 these phone calls that he was placing to Mr. Delgado, and those

1 phone calls are in evidence.

2 And in these phone calls, ladies and gentlemen, you
3 will not hear Mr. Delgado acknowledging that he has any
4 knowledge that this money represents the proceeds of any
5 illegal activity.

6 These are controlled phone calls, and it's mindful
7 that you take that into account, because they had the advantage
8 over Mr. Delgado and they didn't solicit -- they didn't obtain
9 that information through those phone calls.

10 Now, there's a controlled delivery here in El Paso.
11 And again, when Mr. Delgado and Mr. Pimentel come together,
12 there is nothing objective that you can rely on to establish
13 that Mr. Delgado knew that the proceeds represented some funds
14 from illegal activity.

15 When Mr. Delgado is placed under arrest, he is then
16 taken to ICE or DPS, one or the other. But he was in custody,
17 so to speak.

18 When he's taken there, again Mr. Delgado agrees to
19 cooperate. So he was debriefed extensively, extensively, by
20 Agent Tom Justice and Agent Jose de Jesús. And there, he was
21 instructed on how to follow up on his cooperation.

22 Part of the cooperation that he originally ruled out
23 was that he offered -- at their request, of course -- to place
24 a phone call to Pedro Meneses and to lure Mr. Meneses down to
25 El Paso, where Mr. Meneses and Mr. Rubio showed up.

1 And then the following day a second delivery was -- a
2 controlled delivery was made to them and they were arrested.

3 So following their arrest, Mr. Delgado again gets
4 coached on what to do to confront these two individuals, which
5 he did.

6 And ultimately what happened was that these two
7 individuals who have now been recognized, okay? They have
8 pictures of them and so forth. These two individuals are now
9 set free. Nothing happens to them.

10 Mr. Delgado, in the meantime, the following day he
11 made a series of phone calls. By my count -- and they're in
12 evidence -- he made approximately six phone calls. Counsel for
13 the Government has shared one of the transcripts with you.

14 Ladies and gentlemen, those phone calls were staged,
15 because Mr. Delgado was coached on how to talk to Lilian de la
16 Concha, Jesús Chuy Rubio, and others involved with the -- with
17 the group.

18 Whatever was talked about in those discussions, ladies
19 and gentlemen, I submit to you, were part of a ruse that
20 Mr. Delgado was instructed to follow through with in order for
21 his cooperation to be honored.

22 So, so much for those conversations.

23 Agent Ascencio, by the way, when he testified for an
24 hour -- a little over an hour up here -- he testified to the
25 fact that he was here in El Paso.

1 And in response to Ms. Kanof he kept saying, No, I
2 never said that. I never told him to say that. I never told
3 him to say that.

4 Well, when it came time for cross-examination, lo and
5 behold, the first thing that came out of the batter's box was,
6 You were not present in El Paso on those dates when those phone
7 calls were made to Mexico from El Paso.

8 And he acknowledged, Yes, I wasn't here.

9 So much for the testimony that Agent Ascencio shared
10 with you about what he did with Mr. Delgado, because he wasn't
11 here.

12 The person that was here was Agent Tom Justice, the
13 case agent in the case, whose ultimate objective was to take
14 this investigation back to Atlanta, because that's where the
15 case originated after all.

16 And there, ladies and gentlemen, starts the problem
17 with this investigation, as Agent Justice testified, the left
18 hand not knowing what the right hand was doing.

19 Let's cut to the chase. That's what happened.

20 So Mr. Delgado is then instructed to go to Atlanta,
21 where he again is debriefed extensively, not only by Tom
22 Justice, but also by his colleague, Agent Ascencio.

23 Agent Ascencio, by all accounts, is a very
24 well-trained, experienced, skilled undercover agent. As a
25 matter of fact, he teaches. So he took it upon himself,

1 because he's a Spanish speaker, to be the one in the lead.

2 The first phone call, or among the first phone calls
3 that were placed, were to Paco Fernandez. Again, it's very key
4 that you hone in on that conversation. Because at no time --
5 at no time in that conversation did Paco Fernandez acknowledge
6 that the money involved here in this case involved the proceeds
7 of specified unlawful activity.

8 Following the introduction by Mr. Delgado,
9 Mr. Ascencio -- Agent Ascencio took over. And he testified to
10 the fact that he carried out 20 additional phone calls. 20
11 additional phone calls which are not in evidence, but he did
12 testify (indicating) that he did 20 phone calls from the time
13 period of -- I believe that was 9/14 -- September the 14th to
14 approximately October the 1st. So for 17 days he called these
15 individuals that he was gradually working up.

16 None of these individuals, I submit to you, in any
17 way, shape, or form acknowledged that the proceeds involved in
18 this case represented monies involved -- or that originated
19 from specified unlawful activity. Had that been the case,
20 ladies and gentlemen, you would have heard that. That wasn't
21 the case.

22 The last thing that happened, as per Agent Ascencio's
23 testimony, was that he had a face-to-face meeting with Pedro
24 Meneses-Mendoza and Chilo Isidro Vega in McAllen.

25 That conversation is not in evidence, even though he

1 testified -- my belief is that it was recorded. But you don't
2 have it. We don't have it.

3 The fact is, again, in that face-to-face conversation
4 nothing to acknowledge that these funds represented proceeds
5 from illegal activity came about. Had that been the case, I
6 can assure you Agent Ascencio would have testified to that, and
7 he didn't testify to that.

8 What he did testify is that he gave up -- he gave up
9 with the investigation because he thought that he had been
10 compromised. He did not articulate one single good reason to
11 support his belief that he had been compromised by either
12 Mr. Delgado and/or Pedro Mendoza-Meneses or Isidro Rubio. He
13 didn't. He just said, I felt like I was compromised, so I
14 distanced myself.

15 Now, there was testimony that because this case was
16 being handled out of Atlanta, Mr. Delgado kept in contact with
17 Atlanta. He placed a lot of phone calls over there. And it's
18 very important that you bear that in mind, because they're
19 going to come into focus later on when we have the situation
20 that took place up in Chicago.

21 Indeed, there was an event that took place up in
22 Chicago. And again -- again, Mr. Delgado was recorded on these
23 phone call conversations. But before they recorded Mr. Delgado
24 they also recorded Ricardo Martinez. That's Mr. Martel's real
25 name, Ricardo Martinez.

1 MS. KANOF: Objection, Your Honor, outside the
2 evidence. Everybody said they didn't know who he was.

3 THE COURT: I'll sustain the objection. No evidence
4 to that.

5 MR. VELARDE: Mr. Martel, in any event, ladies and
6 gentlemen, was arrested. He was arrested, and he was arrested
7 in connection with the activities that were testified about.

8 And despite the fact that that was the case, no
9 information was developed from him regarding the allegations in
10 this case. Had that been the case, ladies and gentlemen, you
11 would have heard it from Agent McCabe.

12 Now with regards to the conversations themselves, the
13 ones involving Mr. Delgado and Mr. Pimentel, there is no
14 mention, absolutely no mention, that these are proceeds of
15 illegal activity.

16 And mind you, Victor Pimentel -- this is the second
17 go-around for him, so to speak. Because in September, just 10
18 months -- yeah, 10 months before, he was coached by Agent
19 Justice to make these phone calls to Delgado. And so this is
20 one time, again, they coached him. They coached him every time
21 that he would call up Mr. Delgado.

22 Again, that is the most objective piece of evidence
23 that's going to be before you. There's no reference to any of
24 this money originating from any illegal activity. That
25 happened in July 2008.

1 And then Mr. Delgado was brought into ICE offices, not
2 in Atlanta, but here in El Paso.

3 Incidentally, by the way, before -- with regard to the
4 phone calls that Mr. Delgado was placing to Atlanta, you heard
5 Victor Pimentel testify that he, too, reached out to Agent
6 Justice. And Agent Justice did not -- basically didn't react
7 to the call.

8 Why? We subsequently learned because he was fixing to
9 transition from Atlanta to another field office.

10 Mr. Delgado also called up Agent Justice. Agent
11 Justice testified to that.

12 Now, he did also call up Agent Ascencio. Now Agent
13 Ascencio, without ever having written a report about these
14 contacts, as minimal as they were in his eyes, he never
15 documented those phone calls.

16 Those phone records that are in evidence don't lie.
17 Again, that's the most objective piece of evidence you'll have
18 to support Mr. Delgado's representation to you that he did have
19 contact with them days before the pickup and on the day of the
20 pickup. Agent Ascencio did not take any action.

21 Now, fast-forward to December 2008. There was a
22 meeting, a meeting that was set up by local -- the local ICE
23 office, because Victor Pimentel told them that Mr. Delgado's
24 life had been put in jeopardy, that there was a threat made.
25 Ironically, that threat had been made two months before, in

1 October.

2 And that's also very key, ladies and gentlemen.
3 Because when I asked Mr. Pimentel -- or when Mr. Pimentel was
4 asked about that he said, The reason I didn't call ICE that
5 Lilian de la Concha was here was because I was no longer
6 cooperating with ICE.

7 THE COURT: Three-minute warning, Mr. Velarde.

8 MR. VELARDE: And that's very key. Because if he
9 wasn't cooperating, how can he explain the fact that he was now
10 a witness for the Government?

11 He single-handedly was the main author, the main
12 sponsor, behind these famous e-mails, e-mails that he kept all
13 these years and gave to ICE.

14 But now he came into court, and he gave it a spin. He
15 gave it a sinister spin, and in the process, implicated Lilian
16 de la Concha.

17 Well, if Lilian de la Concha was a party to this
18 conspiracy, then how does he explain his cavalier attitude
19 about not following through with his cooperation and -- in
20 calling up ICE?

21 Not that anything would have happened, because Agent
22 Fry did testify, Lilian de la Concha has been coming here to
23 the United States, so nothing has ever happened to her. Okay?

24 And as far as we know -- well, Victor Pimentel -- not
25 Victor Pimentel -- Pedro Mendoza-Meneses, he was allowed to go

1 back. Chilo Vega, likewise.

2 Nobody -- but nobody that theoretically, or as a
3 practical matter, should know about what was going on with this
4 group has been able to provide any testimony except for Victor
5 Pimentel. And I submit to you Victor Pimentel has something to
6 make of this. He's here on a nonimmigrant visa pursuing a
7 Ph.D.

8 What he did back in September of 2007 would have been
9 not only grounds to prosecute, but also to expel out of the
10 country. To this day, this man is still here with this student
11 visa. Plus, in spite of the fact that he denied it, he was
12 paid. He was paid for his involvement in this investigation.

13 So I urge you, when you look at this instruction --
14 when you look at the jury instructions, look at that specific
15 section that pertains to informers. The instructions are very
16 clear. You're supposed to handle the testimony of an informer
17 very carefully.

18 Thank you very much. I will relinquish the remainder
19 of my time to Mr. Esper.

20 MR. ESPER: May it please the Court, Counsel,
21 Ms. Kanof, Ms. Arreola, ladies and gentlemen of the jury.

22 CLOSING STATEMENT

23 BY MR. ESPER:

24 I don't have much time to argue, so I will try to be
25 as concise as I can be.

1 His Honor tells you in his Court's Charge a number of
2 things, one of which is that you are the judges and the -- the
3 sole judges of the credibility and the believability of the
4 witnesses in this case and the reasonable inferences to be
5 drawn from that evidence. That is your decision to make alone.
6 Nobody else can influence you, and you are the ones who are to
7 decide what is the credible believable evidence in this case.

8 Now, you can consider all evidence that was presented
9 so long as you believe it's credible or the reasonable
10 inferences to be drawn from that evidence are credible.

11 And in that vein, ladies and gentlemen, I'd ask you to
12 look at some things that support that this really isn't a money
13 laundering activity involving proceeds of drug distribution,
14 because that's what the Government has to prove.

15 They have to prove that this was a conspiracy to
16 commit money laundering and that the funds were derived from a
17 specified unlawful activity, and that is the conspiracy to
18 possess with intent to distribute controlled substances.

19 Now think about this, first of all, with respect to
20 money laundering and the specified unlawful activity of drug
21 distribution or a conspiracy to do it.

22 Is it reasonable to infer that the wife or the ex-wife
23 of the President of Mexico -- the President of Mexico -- is
24 involved with drug dealers? I mean, how reasonable is it to
25 infer that, ladies and gentlemen?

1 How reasonable is it to believe that Lilian de la
2 Concha is involved with drug traffickers? There's no evidence
3 that that's the case.

4 Now, we've heard all this nonsense. We've heard all
5 the hoot and hollering about drug cartels, Miliano [sic]
6 cartels. What evidence is that there was cartels and that she
7 was the connection to them? How believable is that, ladies and
8 gentlemen, that the former First Lady of the Republic of Mexico
9 is tied in with this sinister drug trafficking organization?
10 It doesn't make any sense. And that's why Mr. Delgado's
11 testimony does make sense.

12 Number two, the amount to be laundered, \$600 million.
13 How reasonable is that to believe, ladies and gentlemen?
14 That's almost the entire budget of the United States of
15 America. That's assuming Congress gets around to even passing
16 a budget.

17 MS. KANOF: Your Honor --

18 MR. ESPER: But, ladies and gentlemen --

19 THE COURT: I'll sustain the objection.

20 MS. KANOF: Thank you.

21 MR. ESPER: 600 --

22 MS. KANOF: I wish, Your Honor.

23 MR. ESPER: 600 million, ladies and gentlemen. That's
24 absurd to believe that that kind of money is being involved in
25 this drug conspiracy. I mean, they're throwing out numbers

1 like it's lunch.

2 Third, who is the person that says that this is drug
3 proceeds or that this is a money laundering operation? Victor
4 Pimentel.

5 This is a guy, ladies and gentlemen, who is -- who
6 lies about having received money in connection with this -- the
7 investigation in this case.

8 He lies -- he's able to fool people as to being a
9 person that he's not.

10 He commits a number of falsehoods. He lies about --
11 initially about his cousin, you know, Ready or whatever his
12 name was -- Mr. Isaac Ochoa. He lies about his involvement.

13 But now that he believes that his cousin can't be
14 prosecuted, Oh, yeah, by the way, he was involved.

15 And think about this, ladies and gentlemen. If this
16 is a real money laundering organization that is sophisticated,
17 how sloppy -- how much more sloppy could this be?

18 Victor Pimentel, working for a drug trafficking
19 organization, goes to Atlanta, Georgia. I mean, he's in the
20 heart of Dixie with Mexican plates. He's driving a vehicle
21 with Mexican plates, and he's carrying around this money with
22 him. He might as well put a neon sign on his vehicle as he's
23 driving through the south saying, Stop me, police. I'm doing
24 something wrong.

25 I mean, think about that. That's absurd that he is

1 involved in drug trafficking and in money laundering.

2 Now what the evidence must show, ladies and gentlemen,
3 beyond a reasonable doubt, is that, number one, there was a
4 conspiracy to engage in money laundering.

5 And His Honor, on page 19, tells you -- gives you the
6 definitions of what a conspiracy is. And basically, a
7 conspiracy is an agreement entered into by Mr. Delgado with at
8 least one other person to violate the laws.

9 It's kind of a partnership in crime. But you must
10 intentionally and knowingly enter into that agreement to
11 violate the law.

12 His Honor tells you, on page 19 of the instructions,
13 that a person does not become a member of a conspiracy even
14 with knowledge that a crime is being committed -- even with
15 knowledge that a crime is being committed -- or the mere fact
16 that certain persons may have associated with each other.

17 And a person who has no knowledge of a conspiracy, but
18 who happens to act in a way which advances some purpose of a
19 conspiracy, does not thereby become a member of a conspiracy.

20 So a person who may act consistently with something
21 that is illegally going on does not, therefore, become a member
22 of a conspiracy.

23 So first, you must find that Mr. Delgado, the
24 Government's evidence, and considering his evidence as well if
25 you believe it, shows beyond a reasonable doubt that he joined

1 in a conspiracy intentionally and knowingly and he was a
2 participant in this unlawful purpose.

3 Now, what was the purpose of the conspiracy? And that
4 was to engage in money laundering.

5 Now, His Honor has read you the jury's instructions,
6 and that is the law as it applies to this case.

7 Now very candidly, I think the law on money
8 laundering -- some of you may go back into that jury room and
9 say, Gosh, what in the world does all this mean? Because
10 there's three different theories that the Government has
11 alleged that money laundering was committed.

12 And I'm going to try to make it as simple as I can.
13 And again, I'm not trying to misinterpret what the law is. His
14 Honor has given you the law. You read it when you go back into
15 that jury room.

16 But the three different theories that the Government
17 has alleged is -- number one is basically money laundering.

18 And the overriding elements that must be proved beyond
19 a reasonable doubt are knowledge. The person who engages in
20 money laundering must have knowledge, must know that he or she
21 is engaging in that particular crime, that he has entered into
22 a conspiracy to commit that crime.

23 Without knowledge being proven beyond a reasonable
24 doubt a person is entitled to be found not guilty.

25 But Part A of this conspiracy to engage in money

1 laundering involves an attempt, or the actual -- to conduct a
2 financial transaction knowing that the proceeds of the unlawful
3 activity is derived from a conspiracy to possess with intent to
4 distribute controlled substances.

5 And, number three, that there's an attempt to conceal
6 or disguise the source of the income.

7 Well, I submit to you, ladies and gentlemen, Part A
8 doesn't apply. The elements have not been proved beyond a
9 reasonable doubt because there was no financial transaction
10 that was conducted either on September the 7th or on July 22nd
11 or 23rd with the intent to conceal or disguise the source of
12 the funds, and knowing that the funds were derived from a
13 conspiracy to possess with intent to distribute controlled
14 substances.

15 Part B involves what is known as international money
16 laundering by concealment. And Part B involves -- again, a
17 person must act with knowledge that the funds are derived from
18 specific unlawful activity, a conspiracy to possess with intent
19 to distribute a controlled substance, and there's the -- and
20 the person is concealing the source of the funds.

21 Now the Government has told you, Ah, well, there's
22 obviously concealment of the source of these funds by this
23 e-mail about this phony document.

24 But the evidence still must show, ladies and
25 gentlemen, that Mr. Delgado was a knowing participant in

1 attempting to -- or engaging in money laundering for the
2 purpose of concealing the source of the funds.

3 Again, ask yourself what -- is this man, who's a
4 licensed attorney, going to be involved with a woman, the
5 former First Lady of the Republic of Mexico --

6 MS. KANOF: Your Honor, I'm going to object. She was
7 never the first lady. They were divorced before he took the
8 presidency, and there was no evidence.

9 THE COURT: I'll sustain the objection.

10 MR. ESPER: The former wife of Vicente Fox, who was
11 President of the Republic of Mexico from 2000 to 2006. Is it
12 reasonable to infer, ladies and gentlemen, that this woman is
13 going to be involved with drug traffickers and money
14 laundering? Is it reasonable to infer -- and that she's going
15 to -- and that Mr. Delgado is going to involve her -- himself
16 with her in that type of activity?

17 Finally, the Part C, ladies and gentlemen -- and I
18 submit to you that is the part that is the most -- easiest to
19 resolve. And that is international money laundering with the
20 intent to avoid a reporting requirement.

21 Reporting requirement means that you're trying to take
22 money to a bank and conceal the bank from reporting that money.
23 So you structure the money in less than \$10,000 when you
24 deposit it so that the bank doesn't fill out a form asking you,
25 Okay. Who are you? Let me see some identification. That

1 triggers information being sent to law enforcement.

2 Or the other reporting requirement is, when you leave
3 this country or when you come into this country if you have
4 more than \$10,000 in cash you have to declare it. You have to
5 fill out a form.

6 When you're leaving this country -- not just when
7 you're coming into this country, when you're leaving as well --
8 you've got to fill out a form.

9 There's been no evidence, ladies and gentlemen, other
10 than Victor Pimentel saying, I'm going to -- I am going to
11 drive this to Colima, Mexico -- there's no evidence that that
12 took place, that there was the intent to avoid the reporting
13 requirements either of a bank or to U.S. Customs -- or Customs
14 and Border Protection or Homeland Security, whatever the agency
15 is, that you're supposed to fill out the form. So Part C
16 does -- likewise, does not apply.

17 Ladies and gentlemen, there's an instruction that the
18 Court gives you called unanimity of theory. And what that
19 means -- it sounds kind of complicated. But what it means is
20 the Government has alleged three separate types of money
21 laundering that I've just talked to you about.

22 If you are to find the elements of a conspiracy to
23 engage in money laundering, you must also find beyond a
24 reasonable doubt which theory, one or all of them -- it doesn't
25 have to be all three. It can be one or more -- but you have to

1 be unanimous and you have to be convinced beyond a reasonable
2 doubt which one it is.

3 So for example, if five of you say, Oh, I think it
4 was -- I think the defendant's guilty of having engaged in
5 money laundering that's alleged in Part A, and six of you say,
6 No, I think it's the one that's alleged in Part B.

7 If you can't unanimously agree on one or both, then
8 you have to acquit the defendant.

9 Now, that may sound paradoxical, because you might be
10 thinking, Well, gosh. I just thought -- I found that he's
11 guilty. We just can't agree on which one it is.

12 Well, if you can't agree beyond a reasonable doubt,
13 the law says you have to acquit. You have to find not guilty,
14 because there has to be unanimity in the theory of money
15 laundering as to one or more than one. That has to be
16 unanimous. You cannot be split as to, I thought he committed
17 this, Part B. I thought he committed Part A, unless all of you
18 believe it, all 12 of you believe it.

19 And I submit, ladies and gentlemen, just as I've
20 explained, that the evidence does not show that these are funds
21 derived from the -- a conspiracy to possess with intent to
22 distribute a controlled substance.

23 Now, the Government has used some evidence -- or has
24 elicited some evidence and has made a lot to do about
25 statements made by Mr. Delgado.

1 And, ladies and gentlemen, one of the things that is
2 troubling -- and you may find it troubling, I don't know.
3 Maybe you don't.

4 But one of the things that's troubling is, why are
5 these statements not recorded so that ladies and gentlemen of
6 the jury, when they sit on a case and there's a dispute -- and
7 there was a dispute in this case as to what the agents said
8 Mr. Delgado said and what Mr. Delgado said he told the agents.
9 There is a dispute.

10 But you know, ladies and gentlemen, even a dinosaur
11 like myself knows how to record a statement in a matter of
12 seconds. I mean, you see it all the time, every day in our
13 lives. You have a cell phone, you have some kind of a
14 recording device and, bam, you record the statement.

15 And that way, when a case comes to court and you as a
16 jury are sitting here and there's a dispute about what was
17 said, what was asked, what was answered, there wouldn't be a
18 problem. It would be easy for the jury. And your function is
19 to determine whether guilt has been proven beyond a reasonable
20 doubt. It would be very easy for the statement, for the
21 recording, to be played. Bam, there it is.

22 But I submit, ladies and gentlemen, that they're not
23 recorded because who is the jury reasonably going to believe?
24 The argument the Government makes and may make in this case, I
25 don't know. I don't know what Ms. Kanof will argue. She's a

1 very articulate and powerful speaker.

2 But what the Government many times argues is, Who are
3 you going to believe, this fine law enforcement agent or the
4 accused, the defendant? It's always the credibility of an
5 accused versus a law enforcement agent. And the Government may
6 argue a law enforcement agent isn't going to lie, but the
7 defendant sure has a motive to lie.

8 That's one of the reasons I submit why not have these
9 recordings, so that you can find out what the truth is?
10 Because very candidly, I wouldn't want my credibility -- I
11 don't think any one of you would want your credibility, if
12 you're an accused, pitched against a law enforcement agent. I
13 mean, they're law enforcement agents.

14 And on top of that, I mean, look at Mr. Fry. It looks
15 like he -- you know, he looks like a choirboy. I mean, how can
16 you not believe him? I mean, just look at him. He looks
17 totally honest.

18 That places the accused at a disadvantage, ladies and
19 gentlemen. And if you have a recording and it's there, there's
20 no doubt as to who said what, who asked what, who answered
21 what.

22 If Mr. Delgado was asked, Oh, yes, do you know
23 Mr. Quezada, this drug smuggler?

24 Oh, yes, I know who he is.

25 He says, No, I wasn't.

1 If it's recorded, it's there. Nobody can come in and
2 say, I didn't say that. It's on the recording.

3 But the Government chooses not to do that for the very
4 reasons I submit, and it's reasonable to infer, those are the
5 reasons.

6 Ladies and gentlemen, all of this evidence, before you
7 can convict, you must be convinced beyond a reasonable doubt
8 that the defendant knowingly participated in a conspiracy, he
9 knew that the funds were derived from the specified unlawful
10 activity, which is a conspiracy to possess with intent to
11 distribute controlled substances.

12 Now, His Honor gives you a definition of reasonable
13 doubt. And I would submit to you, ladies and gentlemen, that
14 reasonable doubt is the consideration of all of the credible,
15 believable evidence in this case and the reasonable inferences
16 to be drawn from it in helping you to arrive at that verdict.

17 So if you look at this pointer that I have, and you
18 judge that evidence, if you use this pointer as a spectrum and
19 all of the credible, believable evidence in this case falls
20 where I have my right thumb and index finger, we're going to
21 mark this point innocent.

22 If that evidence falls at this point and to the right
23 of it, then your verdict is very simple. Not guilty. Because
24 if it's innocent, you're not guilty.

25 Where I have my left thumb and index finger, we'll

1 mark this point guilty beyond a reasonable doubt. If the
2 Government's -- if all the evidence and the reasonable
3 inferences fall at that point and to the left, then the
4 Government has satisfied their burden, the unanimity of theory
5 is clear, and the defendant would be guilty.

6 But there is an area in between these two areas. And
7 this is an area, ladies and gentlemen, that is a gray area.
8 It's an area of not guilty. It's an area where you may say,
9 Wait a minute. This guy had to have known, or surely he knew,
10 or he probably knew, or he probably had knowledge. He must
11 have had knowledge.

12 But it doesn't get to this point of guilt beyond a
13 reasonable doubt. And that is what you, the ladies and
14 gentlemen of the jury, must find. You must find beyond a
15 reasonable doubt that this defendant entered into a conspiracy,
16 that he knew of its unlawful nature, that he knew the funds
17 were derived from a specified unlawful activity; that is,
18 conspiracy to possess with intent to distribute a controlled
19 substance, and that he was a knowing participant and that the
20 unanimity of theory is clear.

21 I submit to you, ladies and gentlemen, give this
22 careful consideration. And after your deliberations, I hope
23 that you come back with a verdict of not guilty as to Count 1.
24 Thank you for your time.

25 MS. KANOF: May I borrow your pointer?

1 MR. ESPER: No, you may not.

2 THE COURT: I have one, if you want mine.

3 MS. KANOF: I think I can do it without it, Judge.

4 THE COURT: You have 18 minutes, Ms. Kanof.

5 MS. KANOF: May it please the Court, Counsel for the
6 Defense, Co-counsel, Anna Arreola.

7 CLOSING STATEMENT

8 BY MS. KANOF:

9 He didn't want me borrowing his pointer because he
10 misstated the law to you. The law's in here.

11 Because he put beyond a reasonable doubt at the very
12 end. But the Charge specifically says the Government's burden
13 is not beyond all possible doubt. There really needed to be
14 something sticking out there.

15 The judge defined reasonable doubt. Reasonable doubt
16 is based in reason and common sense. And when you go into that
17 room, please take your common sense, because the Defense's case
18 makes absolutely no sense. It's not common sense. It's
19 nonsense.

20 When the defendant was on the stand I asked him, Isn't
21 it true, Mr. Delgado, that you told Lilian de la Concha that
22 you were dying of cancer and that your wife, your former wife,
23 had leukemia?

24 And his response was, quote, That is a blatant lie.

25 Well, then we had Government's Exhibit Number 99, all

1 the e-mails that Lilibana Narvaez had, because de la Concha sent
2 them to her, where he's talking about how sick he is, and he
3 just has one more treatment in Houston.

4 Ladies and gentlemen, that's what this case is about.

5 Now -- Government's Exhibit 99.

6 Let's take a look at another blatant lie.

7 Government's Exhibit Number 82, the 2008 personal tax
8 returns of the defendant. He tells you that the Remcon office
9 was his home. Can you imagine what the IRS would do to any of
10 us if we put down our office and they found out -- you know,
11 there's also business tax returns. So you know, that it was a
12 virtual office, that he rented communal space.

13 And when I asked his ex-girlfriend, ex-fiancée, Could
14 he sleep there?

15 She said, Only if you want to sleep on the floor of a
16 conference room.

17 Remember he told you, It was my home because I slept
18 there sometimes.

19 The defendant -- I don't really think that's what the
20 IRS means.

21 Then the dollar amount. He reports \$52,000 of income,
22 which is a decent income, in 2008. And when asked about it, it
23 is either -- it either has, is in the process, or is going to
24 be corrected.

25 Well, really? What's wrong with it?

1 Well, I made up to 200,000. I think he said a couple
2 hundred thousand more than that.

3 How is that an accident? A tax preparer only puts in
4 a tax return what you tell them and show them about your money.

5 You know the truth is a funny thing, ladies and
6 gentlemen, because the truth doesn't change. It is constant.
7 It stays the same.

8 And what Mr. Esper spent like five minutes doing is
9 something called jury nullification. Ignore all the evidence
10 and be mad at the Government because ICE has a policy that they
11 don't record confessions.

12 Well, your duty is not to judge the manner in which a
13 case was investigated. It's to look at the evidence and
14 determine whether or not it happened.

15 The defendant -- or Mr. Esper, when he was giving you
16 the pointer, also misstated what "knowing" means. Knowing is
17 also -- and the judge tells you -- something known as
18 deliberate ignorance. You absolutely know what it is, but you
19 turn a blind eye.

20 I don't really even think we have that in this case.
21 But, ladies and gentlemen, as Tom Cruise said in *Jerry Maguire*,
22 "Show me the money."

23 Government's Exhibits 47 and 74, which turned out to
24 be reverse numbers, but the same numbers. Really? This is
25 inheritance money in 5s, 10s and 20s? Or bond money in 5s,

1 10s, and 20s wrapped exactly like construction money, with two
2 rubber bands and shrinkwrapped in bundles? That's absurd.

3 But the most absurd part about it is which direction
4 the money was going in. Because if this was inheritance money
5 and they wanted to preserve it, it would be coming out of
6 Mexico, not going into Mexico.

7 If this was construction money, where they were going
8 to pay for building something in the United States, it would be
9 going out of Mexico to pay for the U.S. construction, not going
10 into Mexico.

11 Interestingly enough, Mr. Velarde made a comment. He
12 summarily dismissed all of the conversations that Mr. Delgado
13 taped and said he was staged.

14 The seminal piece of evidence, one of the most
15 important pieces of evidence in this case is Government's
16 Exhibit Number 58, a 33-minute conversation with Paco. Because
17 the incriminating information doesn't come from the defendant,
18 it comes from Paco.

19 And I'm going to talk about that a little bit more.
20 But Paco talks about the death threats. Have you ever heard --
21 again common sense or nonsense -- people being killed because
22 they lost \$50,000 in construction money or any kind of bond
23 money or inheritance money?

24 Again, what's inheritance money doing in the
25 United States? Don't you sort of inherit it because you own

1 something in Mexico?

2 But lies -- lies, they change. And Ms. Arreola showed
3 you a couple of examples where in direct, to defense counsel,
4 Mr. Delgado made one story, and then when he was cross-examined
5 he made another story.

6 Lies are something that sometimes it's hard for people
7 to keep straight. Reasonable doubt is not doubt beyond all
8 possible -- it's not beyond all possible doubt.

9 Now, Jose Quezada. He tells Josh Fry that Lilian
10 introduced him to her cousin-in-law, Jose Quezada. And it's
11 written in Josh's report.

12 They want you to believe that Josh made that up out of
13 his own head back in 2012, when the defendant was arrested, and
14 put that in the statement when we -- and he also said he and
15 Lilian and Quezada, you know, decided to move this money.

16 And then we find out that, well, in fact, Quezada was
17 at one time her cousin-in-law, because Vicente Fox's real last
18 name is Vicente Fox Quezada.

19 And nobody is saying the former president of Mexico
20 was involved in drug dealing. But Concha said that he was a
21 very powerful man. And the defendant said, And if anybody was
22 a drug trafficker that I've ever met, it was him.

23 Now, Pedro Mendoza-Meneses, a very important key in
24 this case.

25 One of the theories is concealment, and of course the

1 interstate and that kind of stuff.

2 How is it that seven months after Ms. Narvaez and the
3 defendant start seeing each other that Pedro Meneses wire
4 transfers money from a *casa de cambio* in Mexico to the
5 defendant's girlfriend's account?

6 That's money laundering. It conceals the source of
7 the money. It takes it through somebody's account who's not
8 involved, just like the \$45,000 went into Nevarez's [sic]
9 account.

10 How does this account have her number for her bank
11 account seven months after -- she never met him. She didn't
12 know who he was. She saw that deposit, had no idea where it
13 came from. That's money laundering.

14 Now -- and so is just transportation of money. Look
15 at the definition of money laundering and of the financial
16 transaction. It doesn't have to go through a bank, but in this
17 case it did.

18 Who is Pedro Mendoza? In the e-mails he's called the
19 *contador*. But the defendant refused to say that without saying
20 *publico*, because he wants you to believe that this man was the
21 accountant of a very powerful labor leader who, by the way, his
22 name, you never see anywhere. Not in a phone call, not in an
23 e-mail. That's him trying to insinuate himself into legal
24 conduct by taking this person and associating him with legal
25 conduct.

1 And he calls him over and over and over, CPA.

2 Does a CPA transfer money into somebody else's account
3 when he doesn't even know who it is?

4 Does it make sense that the CPA of a wealthy labor
5 leader would come to El Paso to pick up a million dollars in
6 cash with his cousin, because it is he that is arrested. What
7 CPA for a legitimate labor leader can even be lured -- and he
8 wasn't lured to El Paso. I know the defendant wants you to
9 believe that -- but can even be lured to come pick up money?
10 Because remember, DPS does a controlled delivery on one day,
11 and the very next day, who is picking up the money but Pedro
12 and his cousin. They were already here.

13 Now, the defendant says to the DPS officer -- by the
14 way, you'll notice every single witness lied that was from ICE,
15 according to the defendant. Every single one of them was
16 lying. The DPS officer was only mistaken.

17 He tells the DPS officer that he's going to Mexico.
18 Victor said they were going to Santa Teresa to the port of
19 entry, and that Victor had a cashier's check, and that he was
20 going to deposit it in a bank.

21 Then why call Pedro and his cousin to come to El Paso
22 if they were going to deposit it in a bank?

23 Now, TEPDEL. TEPDEL was supposed to be -- he
24 testified TEPDEL was a contract through Nevada, and it was
25 supposed to be the contract that was between them.

1 By the way, if you look at TEPDEL, which I think is
2 Government's Exhibit 26A, if you look at the TEPDEL contract,
3 not only does it say it's for recycling of plastic
4 containers -- which is not a bond.

5 But if you look at TEPDEL, you'll notice in the back
6 who the co-conspirators are. And an interesting thing.

7 When Paco is talking to the defendant in Government's
8 Exhibit 58, that 33-minute conversation, Paco names the
9 conspirators, and never once is Victor Pimentel named in
10 anything as a co-conspirator.

11 The defendant doesn't name him to ICE. Paco doesn't
12 discuss that he owes part of the money. He's never named,
13 because he's not working for this guy Vargas. He's working for
14 the defendant, because he's a student at UTEP. And he, at one
15 time, really trusted him, and he was living with him for a good
16 period of time.

17 The defendant -- the settlement agreement. I think we
18 beat that dead horse. It's Government's Exhibit 35. But I
19 mean, notice -- I mean, notice Government's Exhibit Number 35,
20 because he is waving around -- Victor is waving around the
21 settlement agreement in the Georgia tape with the Georgia
22 sheriff. You see it.

23 And immediately he says, This is what it's for.

24 And you know that that's what it's for. It was sent
25 the day before.

1 And then you see it again in the DPS video with
2 Mr. Delgado in the car. And there's no, What are you doing
3 with the mediation papers? Because there was no mediation.

4 Raul Aceves and the Suburban, another -- you know, the
5 devil is in the details.

6 Over and over again he said that car was for
7 Mr. Aceves, who was running for office in Mexico, and -- the
8 Suburban -- and we were going to lend it to him.

9 Well, you look at Government's exhibit number -- I
10 think, it's Number 19 -- no, it's not Number 19 -- Number 8B.

11 And it says she wants -- it doesn't say the feminine
12 she, it's conclusory. She wants a new Suburban and for us to
13 pay her. She.

14 What do you think? And here's why you know it's
15 Lilian. "With the power she brings, she deserves that, my
16 little treasure, and more. I will ask you to respect her."

17 No Mr. Aceves anywhere.

18 Look at how you know it's drugs. "The plaza is hot."
19 Government's Exhibit Number 9.

20 Knowing that it's drug money, Victor sends him this
21 story about this drug captain or head from Guadalajara being
22 arrested in Colombia.

23 And how does the defendant respond? "The plaza is
24 hot."

25 Look at the money wrappers. We already talked about

1 that.

2 Know the defendant was destitute. Now, there is
3 absolutely nothing wrong with living with your mother, but this
4 guy purports to be some famous lawyer who makes all this money
5 in corporate law. So then I would think you would build your
6 mother a really nice house and have her live, I don't know, in
7 a very nice house near you or maybe live with you, but you not
8 live with her.

9 Making color adjustments. You know when Lilian talks
10 about the three groups, the ironworkers, the construction
11 workers -- and I can't remember what the third one is.

12 But anyway, she tells -- and what Victor told you is
13 those are different cells of the same organization. And you
14 actually see that in the Girl Scout e-mail as well, because
15 she's talking about with the contributions we're getting, it's
16 going from 300 to 500. Okay?

17 Who contributes more boxes into a warehouse, if it's
18 cookies? Oh, I'll talk about that a little bit later.

19 Death threats. Government's Exhibit Number 58. You
20 must pay back the money. Page 20. Paco.

21 And there have been -- there have been death threats.
22 By the way, the fourth -- let's talk about Lilian de la Concha,
23 one other thing.

24 It was the defendant who gave up Lilian de la Concha,
25 not Victor. He was -- Victor was cross-examined.

1 You didn't tell him about Lilian.

2 He said, No, I didn't.

3 The defendant tapes Lilian, this woman that he, at
4 that time, was allegedly dating, and in one of the calls said
5 he bought her a ring. A ring.

6 And she talks about the threats.

7 But then not staged, because nobody is talking to Paco
8 and telling him what to say. He says there have been death
9 threats. On page 33 he said, Let's say, you know, for example
10 we're normal people who would never kill anyone for money.

11 And Delgado says, Sure.

12 And Paco said, That's it. It's Pete. It's Chuy.
13 Pete and Chuy are willing to say, You know what? We will put
14 up the money.

15 Paco also says, I don't know, Marco. If you, with
16 your influence, with your power, I understand what you told me,
17 that the option that -- that the -- that having already the
18 product -- the product -- ready to go. The product. Code
19 talk.

20 He also talks about the one, instead of the one
21 million dollars.

22 The defense attorneys somehow, you know, obscured the
23 method of drug trafficking and are saying, Ooh, there's not
24 evidence because nobody said, Oh, you know what, Marco? That
25 drug trafficking money that got caught for the million dollars,

1 can you, like, see if you can get it back so we don't get
2 killed by the cartel? Really?

3 Common sense or nonsense, that you would ever have an
4 admission between drug dealers who are on the phone that it was
5 drug money.

6 But he said: The product, and go tomorrow and return
7 the product to its final destination is impossible.

8 We know the product is money. Paco did not know he
9 was being taped, but he knew he was on the phone.

10 At page 40, Paco: She told me that someone had
11 chambered a round on Chuy.

12 Page 43. Okay. Paco. Only Paco: Okay. Well, very
13 well, Marco. Now, one thing. Imagine that Chuy or Chuy's
14 people say flatout, No, no, no, we don't want to do anything
15 more with you. We want our money and we want it now.

16 Page 44, Paco: Would you be willing to get in for the
17 part and proportion of the commission that you have taken? I
18 mean the 50 percent?

19 And then Paco names the conspirators on page 50.
20 Okay. I have no problem. Okay. In assuming that we -- that
21 we are not five, we are six -- you, Lilian, Pete, Chuy, Chuy's
22 cousin, and myself, six.

23 Again, he doesn't mention Victor.

24 Page 51.

25 THE COURT: You've got three minutes.

1 MS. KANOF: Thank you, Your Honor.

2 I don't know -- I don't think Lilian has enough money,
3 has half of the possibility to secure the money.

4 Again, portrayed as some rich individual, maybe not.

5 And Exhibit Number 7, the ironworkers.

6 Also, ladies and gentlemen, what's really important to
7 remember is Paco is not being coached. And he says, Marco, at
8 least you're the smartest among us and the one who knows the
9 most about this. Where do we go now? I mean -- I mean, with
10 you, what should I do? Yes. You as my leader of this, okay.
11 My leader. Should I speak with Chuy and tell him? What should
12 I tell him?

13 Colima. The defendant mentions Colima. You heard
14 that it's the Atlanta of Mexico, the hub of drugs and drug
15 money.

16 Victor testified that's where they were going to -- he
17 and Marco Delgado were going to be driving. And oh, yeah,
18 evidently there was a meeting in Colima. It's just that
19 Mr. Delgado wants you to believe it was something else. But if
20 you read it, you see, Why go into the lion's den? It's hot in
21 Colima.

22 It's in that transcript.

23 Ladies and gentlemen, if you look at the tolls and
24 examine them, there are a lot of calls. But the defendant is
25 making all of them.

1 This -- Victor told ICE that the Chicago deal, he
2 called him on the 15th of July. There's no calls on the 15th
3 of July.

4 If you look at the tolls, the first time an agent
5 calls -- this is December, from July 9th, which is what the
6 tolls are -- is two days after Chicago. It is July 25th.

7 He's making a lot of calls, but they're not calling
8 him. In fact, they're blowing him off.

9 In a conspiracy, the people can be known or unknown.
10 In this case, you know. You know Chuy was the intermediary
11 between the drug trafficking organization and these individuals
12 that worked from Spain.

13 By the way, they all also talk about Euros in there,
14 corroborative of the fact that it was from Spain.

15 But, ladies and gentlemen, who gives only five boxes
16 of Thin Mints to a school? Because that's what that e-mail
17 says. You are obligated to give five boxes to each school a
18 week.

19 That's code talk, because it is nonsense to think
20 anybody is going to say, Hey, to help our money laundering you
21 need to do this.

22 It's common sense, ladies and gentlemen. It is not
23 nonsense that the defendant conspired. You don't have -- he
24 didn't have to complete it. He just had to conspire.

25 And if you look at conspiracy, you don't even have to

1 talk about it. It can be inferred between the conspirators.
2 It's nonsense to think that they were not conspiring to launder
3 up to 600. Remember 300, 500 cookies, up to \$600 million
4 ultimately, so that the defendant could get rich.

5 Thank you.

6 THE COURT: Ladies and gentlemen of the jury, now you
7 must deliberate.

8 Mr. Saucedo and Ms. Piñedo, I'm going to excuse you
9 with our thanks for helping us. You know we couldn't use you,
10 but we almost did. But I do want to thank you, ladies and
11 gentlemen.

12 The rest of you, you're not going out to lunch. Okay?
13 It's already here. You'll have your lunch here.

14 And I'm sorry I cannot offer you -- the alternates --
15 I cannot offer you to stay and have lunch, because now they
16 are officially deliberating. There cannot be anybody else in
17 the jury room with them. Okay?

18 So again, with our thanks you are being excused. Once
19 you leave here you are excused.

20 With that, ladies and gentlemen, we'll be in recess
21 awaiting the jury's verdict.

22 (Jury retired to deliberate; open court.)

23 THE COURT: Ms. Cuellar, I understand the jury has
24 reached a verdict, ma'am.

25 FOREPERSON: Yes, Your Honor.

1 THE COURT: If you'll hand it to the officer, please.

2 The defendant will rise.

3 The clerk is going to read the verdict.

4 THE CLERK: In Cause Number EP-12-CR-2106, the
5 United States of America versus Marco Antonio Delgado.

6 We, the jury, find the Defendant Marco Antonio Delgado
7 guilty as to Count 1.

8 The answer to Question Number 1 is yes.

9 The answer to Question Number 2 is yes.

10 And the answer to Question Number 3 is yes.

11 Signed on this date, the foreperson of the jury.

12 THE COURT: You may be seated.

13 Any motions or requests, gentlemen?

14 MR. ESPER: Poll the jury, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, a
16 request has been made to poll the jury. That means that you're
17 going to be asked individually if this is your verdict.

18 You may proceed with polling.

19 THE CLERK: Juror Number 1, is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 2, is this your verdict?

22 THE JUROR: Yes.

23 THE COURT: You don't have to stand up. You can
24 answer sitting down.

25 THE CLERK: Juror Number 3, is this your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Juror Number 4, is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror Number 5, is this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number 6, is this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 7, is this your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror Number 8, is this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror Number 9, is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Juror Number 10, is this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror Number 11, is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number 12, is this your verdict?

19 THE JUROR: Yes.

20 THE COURT: Ladies and gentlemen of the jury, I placed
21 you under certain instructions that I reminded you every day,
22 and I did this when you were first selected.

23 I'm relieving you of those instructions. I'm giving
24 you the opportunity to discuss this case with anyone if you
25 wish. I'm leaving it entirely up to you, if you wish to. You

1 don't have to. It's entirely up to you.

2 Ladies and gentlemen, I want to thank you. It took a
3 little bit longer than I anticipated when we started, but I
4 hope you -- at least I think you found it interesting. You
5 paid a lot of attention to the testimony.

6 So with our thanks, ladies and gentlemen of the jury,
7 at this time you are being excused.

8 All rise for the jury.

9 (Jury leaves the courtroom; open court.)

10 THE COURT: Counsel, I'm setting the sentencing date
11 for January the 24th of next year at 10:30 a.m.

12 Anything else at this time, Counsel, for the
13 Government?

14 MS. KANOF: Nothing from the Government, Your Honor.

15 MR. VELARDE: Nothing further, Your Honor.

16 THE COURT: Very well. You may be excused. We'll be
17 in recess.

18 * * * * *

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CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: March 24, 2014

/s/ Maria del Socorro Briggs

Maria del Socorro Briggs